

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB APRIL 3, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Advance Watch Co., Ltd.

Serial No. 75/183,469

Mark A. Cantor of Brooks & Kushman P.C., for Advance Watch Co., Ltd.

Jeri J. Fickes, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

Before Hanak, Chapman and Rogers, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On October 18, 1996 Advance Watch Co., Ltd. filed an application to register the mark JAM TIME on the Principal Register for "watches and clocks," based on applicant's assertion of a bona fide intent to use the mark in commerce. Applicant disclaimed the term TIME.

The Examining Attorney finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C.

§1052(d), on the ground that applicant's mark, if applied to its identified goods, would so resemble the previously registered mark JAMS for "watches and costume jewelry, namely, brooches,"¹ as to be likely to cause confusion, mistake or deception.

Applicant appealed. Briefs have been filed. Applicant requested, but later withdrew its request for, an oral hearing.

We affirm the refusal to register. In reaching this conclusion, we have considered all of the relevant du Pont² factors.

It is the Examining Attorney's position that the involved marks are similar in meaning and commercial impression; that the addition of the descriptive term TIME in applicant's mark, and the fact that registrant's mark is the plural JAMS are minor differences that do not create different commercial impressions; and that the goods are in part identical (watches) and are otherwise related.

Applicant essentially contends that the Examining Attorney erred by dissecting the marks, and when considered

¹ Registration No. 1,537,352 issued May 2, 1989, Section 8 affidavit accepted, Section 15 affidavit acknowledged. The claimed date of first use and first use in commerce is April 1987. (This registration also includes goods in Classes 18, 25 and 30, but those classes were not cited against applicant.)

² See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973).

in their entirety the marks are not confusingly similar; that the marks JAM TIME and JAMS "are totally different in appearance, presentation, and commercial impression" (brief, p. 3); and that the term JAM (or JAMS) is entitled to only a narrow scope of protection because the term is commonly used in the fields of jewelry and clothing and accessories.³

The only issue we must determine is whether applicant's mark is so similar to the cited registered mark that when seen by purchasers used in connection with the same or similar goods it will be likely to cause confusion as to the source or origin of the goods. See Kangol Ltd. v. KangaROOS U.S.A. Inc., 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992).

We turn first to a consideration of applicant's goods vis-a-vis those of the cited registrant. We find that the goods are in part identical and are otherwise related. Applicant did not argue to the contrary.

³ Applicant has requested that the Board take judicial notice "of the fact that 'JAM' is a common component in a wide variety of registered trademarks." (Reply brief, footnote 2.) The request is denied. This is not a matter appropriate for judicial notice and the Board does not take judicial notice of the records of the Patent and Trademark Office. See *In re Duofold, Inc.*, 184 USPQ 638 (TTAB 1974). Applicant submitted in the record a typed listing of several registrations for goods in Class 25 (clothing); pages from a Dialog search showing several registrations for at least Class 25 (clothing); and photocopies

Likewise applicant did not argue, and we do not find, any differences in the channels of trade or purchasers. We must presume, given the identifications, that the goods travel in the same channels of trade, and are purchased by the same class of purchasers. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

Turning then to a consideration of the respective marks, it is well settled that marks must be considered in their entireties. However, our primary reviewing court has held that in articulating reasons for reaching a conclusion on the question of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature or portion of a mark. That is, one feature of a mark may have more significance than another. See *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987); and *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985).

Moreover, under actual market conditions, consumers generally do not have the luxury of making side-by-side comparisons. The proper test in determining likelihood of

of five applications as published in the Official Gazette for at least goods in Class 14 (watches and jewelry).

confusion is not a side-by-side comparison of the marks, but rather must be based on the similarity of the general overall commercial impressions engendered by the involved marks. See *Puma-Sportschuhfabriken Rudolf Dassler KG v. Roller Derby Skate Corporation*, 206 USPQ 255 (TTAB 1980).

In this case, there are obvious differences in the two involved marks, specifically that the term JAM is singular in applicant's mark but plural in registrant's mark, and applicant's mark also includes the word TIME (disclaimed). However, these differences do not serve to distinguish the marks. Purchasers are unlikely to remember the specific differences between the marks due to the recollection of the average purchaser, who normally retains a general, rather than a specific, impression of the many trademarks encountered. That is, the purchaser's fallibility of memory over a period of time must also be kept in mind. See *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573 (CCPA 1973); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd unpub'd* (Fed. Cir., June 5, 1992); and *Edison Brothers Stores v. Brutting E.B. Sport-International*, 230 USPQ 530 (TTAB 1986).

There is no evidence in this case that the term JAM or JAMS is anything other than arbitrary when applied to

watches, clocks, and/or costume jewelry. This plays a major part in creating the similarity of the overall commercial impression of these marks. We find the commercial impression created by the marks involved herein is substantially similar. See *The Wella Corporation v. California Concept Corporation*, 558 F.2d 1019, 194 USPQ 419 (CCPA 1977); and *Gruen Industries, Inc. v. Ray Curran & Co.*, 152 USPQ 778 (TTAB 1967).

Purchasers may assume that JAM TIME is simply a variant of registrant's JAMS mark, used to identify a new line of watches. That is, purchasers are likely to assume that applicant's goods come from the same source as registrant's goods or are in some way sponsored by or associated with registrant. See *In re Imperial Jade Mining, Inc.*, 193 USPQ 725 (TTAB 1976).

Applicant's submission of third-party applications and registrations is not persuasive. Third-party registrations are of little weight in determining likelihood of confusion as they are not evidence of use of the marks shown therein and they are not proof that consumers are familiar with them so as to be accustomed to the existence of similar marks in the marketplace. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.* 13 USPQ2d 1618 (TTAB 1989). Moreover, the third-party registration evidence submitted

by applicant relates mostly to registrations in Class 25 (clothing), not the Class 14 goods (watches, jewelry) involved in this case. Third-party applications are of virtually no evidentiary value. While the Patent and Trademark Office strives for consistency, each case must be decided on its own facts and record. Of course, we do not have before us any information from the third-party application or registration files.

Based on the identity and/or relatedness of the parties' goods, the identical trade channels and purchasers, and the similarity of the marks, we find that there is a likelihood that the purchasing public would be confused if applicant uses JAM TIME as a mark for watches and clocks.

Decision: The refusal under Section 2(d) is affirmed.

E. W. Hanak

B. A. Chapman

G. E. Rogers
Administrative Trademark Judges,
Trademark Trial and Appeal Board